IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 99 OF 2005

M/s. Pilcon Engineering .. Applicant
Vs.
Maharashtra State Electricity Board & Ors. .. Respondents

Mr. Suresh Kumar i/by Mr. U.S. Samudrala for applicant.
Mrs. A.R.S. Baxi for Respondents.

CORAM : B. H. MARLAPALLE,J.
Date : March 10, 2006.

P.C.:

1. Heard Mr. Suresh Kumar the learned counsel for the applicant and Mrs. Baxi the learned counsel for the respondents.

2. The Work Order, setting out the general conditions of contract, was executed between the parties on 7/3/1998 for the contract of "Construction of ROB near Vivekanand Nagar Railway Station for CTPS, Chandrapur". The work was completed by the stipulated date i.e. 28/12/1998 and on 10/11/2004 the applicant-contractor invoked the clause of arbitration for settlement of the pending monetary dues. As there was no response to appoint an Arbitrator under Clause 15 of the General Conditions of Contract, this application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the contractor.

3. The respondents have filed affidavit in reply and opposed this application. There is no dispute that the total contract value was Rs.2,44,34,757/- (estimated cost of Rs.2.75 crores) and the work was completed in time. The respnodents' claim that an amount of Rs.16,86,827/- was due to be paid to the contractor as mentioned in his letter dated 4/2/2002 and from the said balance amount Rs.15,26,786/- were released by deducting the amount of Rs.1,60,043/- on 30/9/2004 and that too after the contractor submitted the no claim certificate. This no claim certificate allegedly submitted on the stamp paper is the basis for opposing this application on the grounds that when the applicant-contractor has not raised any protest against the final settlement of dues on 30/9/2004, the subsequent approach by the letter dated 10/11/2004 is by way of an after thought and, therefore, this application under Section 11 cannot be entertained. The learned counsel for the respondents in support of her contentions placed reliance on the decision in the cases of M/s.P.K. Ramaiah and Company vs. Chairman & Managing Director, National Thermal Power Corpn. [1994 Supp (3) SCC 126] and Nathani Steels Ltd. vs. Associated Constructions [1995 Supp (3) SCC 324]. She has also relied upon a decision of this court in the case of M/s. Kelkar and Kelkar vs. Indian Airlines and anr. [1996 (2) Bom. C.R. 303],

wherein this court held, inter alia, that once there is settlement of the claims made, there remains no pending dispute and the question of arbitration thereafter does not arise.

4. On the other hand Mr. Suresh Kumar the learned counsel for the applicant-contractor submitted that the no claim certificate was obtained by the respondents for settlement of the bills and for releasing the payments it was a condition precedent. This certificate of no claim was not by way of an amicable settlement between the parties and, therefore, issuance of such a certificate would not come in the way of referring the claims for arbitration under Clause 15 of the General Conditions of Contract. In support of these contentions, he placed reliance on the following decisions of the Apex Court:-

(a) Union of India & anr. vs. M/s. L.K. Ahuja and Co. [(1988) 3 SCC 76].

(b) Jayesh Engineering Works vs. New India Assurance Co. Ltd. [(2000) 10 SCC 178].

(c) Chairman and MD, NTPC Ltd. vs. Reshmi Constructions, Builders and Contractors [(2004) 2 SCC 663]

5. In the instant case, the applicant has submitted a "no claim certificate" on a stamp paper on

or about 16/8/2004 and it reads as under:-

> ". We M/s. PILCON ENGINEERING, Rajnandgaon (C.G.) do hereby confirm that we have accepted 31st and final bill for the work of Construction of Road Over Bridge near Vivekanand Nagar, Railway Station at C.T.P.S., Chandrapur executed against work order No.CEC/Gen.I/DyCE (C) III/CNP/RCB/C-26/ 571 dated 7.3.1998 as full and final with all recoveries mentioned therein. We hereby confirm that we have withdrawn our all old claims lodged during the currency of the work. We also hereby confirm that we do not have any claim right now and will not lodge any claim of any nature in future, against the above mentioned work completed by us."

The learned counsel for the respondents submitted that once the contractor confirmed that he did not have any claim and would not lodge any claim of any nature in future in respect the work already completed, it was not permissible for the contractor to raise any further monetary claims in respect of the very same contract and, therefore, this application requires to be rejected. These submissions do not impress me. On 12/8/2004 the Deputy Chief Engineer of the Respnodent-Board addressed a letter to its Executive Engineer forwarding the final bills received from the applicant and called upon the Engineer to obtain the no claim certificate on appropriate stamp paper before releasing the payment. A copy of this letter dated 12/8/2004 has been placed on record and it is obvious that the no claim certificate was obtained for releasing the payment as against 31st and final bills

submitting by the present applicant and it was not by way of an amicable settlement of the pending bills between the parties. The law laid down in the case of Reshmi Constrcutions (Supra) squarely applies to the facts of this case and unless the no claim certificate was submitted by way of an amicable settlement between the parties the same could not come in the way of the applicant for referring the disputed claims to the Arbitrator under Clause 15 of the General Conditions of Contract. Nevertheless, the right of the respondents to take preliminary objection under Section 16 of the Act cannot be taken away and such a right can be exercised before the Arbitrator.

6. Hence, this application is allowed and by consent of the parties Mr. S.R. Joshi, retired Chief Engineer (C) is hereby appointed as the sole Arbitrator in respect of the claims raised vide letter dated 10/11/2004. The arbitral proceedings shall be held at Mumbai and the parties to appear before the sole Arbitrator within a period of three weeks from today and finalise further terms of the arbitral proceedings including the time span and fees etc.

(B.H. Marlapalle, J.)